

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.1014 OF 1987

Eknath Popat Ganore-Patil

...Appellant

Vs.

The State of Maharashtra

...Respondent

Mr.Sandesh Deshmukh i/b Mr.R.A.Thorat for the Appellant
Mr.Y.M.Nakhawa,A.G.P. for the Respondent.

CORAM: A.S.OKA, J.

DATED: APRIL 26, 2006.

ORAL JUDGMENT:

1. I have heard the learned Advocate for the Appellant and the learned A.G.P. for State. The Appellant has taken exception to the Judgment and Award dated 23rd October 1984 passed by the learned Joint District Judge, Nashik in a Reference under section 18 of the Land Acquisition Act, 1894 (hereinafter referred to as the said Act). By the impugned Judgment, the Reference Court decided several land acquisition references under section 18 of the said Act. In this case we are concerned with the L.A.R.No.187 1980. The Reference Court awarded additional amount of compensation in the sum of Rs.50,107.23 in favour of the Appellant who is the claimant. The claim in this Appeal is confined to the denial of compensation in respect of the trees on the acquired land. The Award of the Special Land Acquisition Officer under section 18 of the said Act in this case has been passed in

the year 1979.

2. The learned Advocate for the Appellant submitted that the Special Land Acquisition Officer has not considered the claim for compensation as regards 200 guava trees. According to him, his claim for compensation for 35 Banana trees, 59 teak trees, 250 Popaya trees has been denied. He referred to the deposition of the claimant in which he deposed that on land bearing Gat. No.77 there were 1000 guava trees and 50 teak trees and in addition to that on the same Gat number there were 250 Popaya and 230 Banana trees. He submitted that there was no reason for the Reference Court to deny the compensation on the said ground. The learned A.G.P. submitted that as there was no evidence, no compensation has been granted on account of the trees. The Reference Court has therefore denied the additional compensation on account of trees. The learned A.G.P. therefore submitted that no case is made out for enhancement.

3. I have considered the submissions. In paragraph No.17 of the impugned Judgment, the Reference Court has fixed the market value for four categories of Jirayat lands and three categories of Bagayat lands and on the basis of the said rates, enhancement in market value has been granted to the Appellant. So far as the claim regarding the trees is concerned, the claimant has deposed before the Reference

Court that the aforesaid trees were in existence. The claimants have examined one Shriniwas as a Witness No.24 who was working as Awal Karkoon. From the said witness the report of the agricultural Officer as regards trees existing on the acquired land was got produced which was marked as Exh.124. The Reference Court found that the Special Land Acquisition Officer has accepted the said report and has awarded compensation in respect of the trees which were shown to be in existence in the report. The version of the claimant in the Reference regarding existence of additional trees was not supported by the report at Exh.124. The report at Exh.124 is got produced by the claimant by examining the witness from the office of the Special Land Acquisition Officer. The Appellant has relied upon the said report. Apart from the interested oral testimony of the Claimant, there is no other independent evidence regarding the existence of the trees in dispute. In my view, there is no error committed by the Reference Court when the claim for compensation as regards trees was not granted.

4. As the Award under section 11 has been made prior to 30th April 1984, the claimant will not get benefit under section 23 (1-A) of the said Act. However, the claimant will get benefit of section 23(2) and section 28 of the said Act. From the calculation of amount of the compensation made by the Reference Court, it is not clear whether the statutory

benefits are granted or not.

5. Hence, I pass the following order :

i) The rate of market value of the land fixed by the impugned Judgment and Award is confirmed.

ii) The additional claim for compensation on account of trees made by the Appellant-claimant in this Appeal is dismissed.

iii) It is clarified that the Appellant will be entitled to statutory benefit under section 23(3) and section 28 of the said Act. If the said benefits are not already granted by the Reference Court, fresh calculations of the compensation payable to the Appellant will be made by the Reference Court within a period of four months from the date of receipt of writ of this order.

iv) Order as to costs passed by the Reference Court is maintained.

Judge.